IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

DOUGLAS H.,
Appellant,

v.

AMANDA M. AND A.H.,
Appellees.

No. 2 CA-JV 2018-0122
Filed November 29, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. S20170136
The Honorable Scott McDonald, Judge

AFFIRMED

COUNSEL

The Huff Law Firm PLLC, Tucson
By Daniel R. Huff
Counsel for Appellant

Pima County Office of Children's Counsel, Tucson
By Sybil Clarke
Counsel for Appellees Amanda M. and A.H.

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

E C K E R S T R O M, Chief Judge:

¶1 Appellant Douglas H. challenges the juvenile court's order of June 5, 2018, terminating his parental rights to his child A.H., born November 2015, on grounds of abandonment and the length of Douglas's incarceration. *See* A.R.S. § 8-533(B)(1), (4). On appeal, Douglas challenges the sufficiency of the evidence to sustain either of those statutory grounds for severance.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2 (App. 2008).

¶3 In December 2015, Douglas assaulted petitioner Amanda M., A.H.'s mother, hitting her, holding her down, choking her, and holding an ax to her throat. Douglas was arrested as a result of that incident, and was subsequently charged for an armed robbery committed shortly before the assault. He has been incarcerated since and is due to be released to a term of probation in May 2019.

¶4 Amanda obtained an order of protection against Douglas after the assault, but she allowed it to expire a year thereafter. Douglas did not challenge that order. Amanda testified at the severance hearing that Douglas had committed several other acts of domestic violence against her. She said she feared for A.H.'s safety based on threats Douglas had made toward her and the child, as well as his behavior with the child in the five weeks before he was incarcerated. Although Douglas's parents visited with

A.H., Amanda asked that they not provide Douglas with pictures of the child or take the child to visit Douglas. Douglas has taken no action, legal or otherwise, to have contact with A.H. since his incarceration and has sent no letters, gifts, or support to the child.

¶5 Amanda filed a petition for termination of Douglas's parental rights in May 2017, and she alleged in an amended petition that his rights should be severed based on the grounds of abandonment, abuse, chronic substance abuse, and his incarceration. *See* A.R.S. § 8-533(B)(1)-(4). In a thorough under-advisement ruling, in which it properly explained the relevant law, the juvenile court found that Amanda had failed to establish the abuse and substance abuse grounds. But the court found that Douglas had abandoned A.H. and that severance was appropriate based on the length of his incarceration.[1]

¶6 On appeal, Douglas contends the juvenile court "misapplied the law in finding that [he] had abandoned" the child and in determining that the length of his prison term "would deprive the child of a normal home for a period of years." We disagree. In challenging the juvenile court's ruling Douglas relies on favorable evidence to the exclusion of the contrary evidence cited by the court. But we do not reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002), and will defer to the court's resolution of conflicting inferences if supported by the record, *In re Pima Cty. Adoption of B-6355 & H-533*, 118 Ariz. 111, 115 (1978). The record before us contains reasonable evidence to support the factual findings in the juvenile court's minute entry order, and we see no error of law; we therefore adopt the court's ruling. *Jesus M.*, 203 Ariz. 278, ¶ 16 (citing *State v. Whipple*, 177 Ariz. 272, 274 (App. 1993)).

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[1]As Douglas points out on appeal, the juvenile court at one point incorrectly stated that A.H. would be 4.5 years of age at the time of Douglas's release. Elsewhere in its decision, however, the court correctly identified A.H.'s birthdate, and nothing suggests that the court's apparent error in calculation altered its conclusion that Douglas, who the court noted had been in contact with A.H. for only the first five weeks of the child's life, "will have been absent from all but one month of the Child's 'formative years.'" Although Douglas cites this court to a website relating to developmental milestones, this information was not before the juvenile court; we therefore do not consider it, and Douglas has not shown that information about specific developmental milestones was the basis for the court's decision.

¶7 The juvenile court's order terminating Douglas's parental rights is affirmed.